

General Information Letter: Petition to use separate accounting may not be granted without evidence of distortion.

December 24, 2002

Dear:

This is in response to your letter dated December 19, 2002, in which you request permission to use separate accounting rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

We respectfully request authorization to file our Illinois Partnership Replacement Tax Returns for the years beginning 2002 and thereafter using an alternative apportionment formula. We propose to file our tax returns based upon the separate books and records that are maintained for each of the properties owned by the partnership.

The partnership currently owns two properties, one property located in Illinois and the other in Connecticut. Separate books and records are maintained for each of the properties and those books and record reflect all the activities and each item of income and/or loss for that property. We therefore believe that reporting the separate activities of each of the properties will provide a more accurate measure of the income and/or loss of the properly allocable to each of the states in which the partnership owns property.

Response

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at www.revenue.state.il.us.

Your request fails to meet the most important substantive provision of that regulation, because it fails to make any showing that the statutory apportionment method does not "fairly represent the extent of the person's business activity in this State." 86 Ill. Adm. Code Section 100.3390(c) describes the burden of proof for making this showing.

Your request contains no facts that would support a conclusion that separate accounting is appropriate. For example, you do not address the issues of how administrative, property management and financing expenses are allocated between the properties under separate accounting or explain why such allocation better reflects the extent of the taxpayer's business activity in Illinois than does the statutory apportionment method. Accordingly, your petition cannot be granted at this time.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed December 19, 2002, will allow a taxpayer to use the requested method on original returns due on or after April 18, 2003, if granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390.

Sincerely,

Paul S. Caselton
Deputy Chief Counsel -- Income Tax